Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	

<u>COMMENTS OF METROPCS COMMUNICATIONS, INC.</u>

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MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments on the *Further Notice of Proposed Rulemaking* ("*FNPRM*")[2] released by the Federal Communications Commission (the "FCC" or "Commission") in the above-captioned proceedings, in which the Commission seeks comment on the best path to reform and modernize how contributions towards the Universal Service Fund ("USF") are calculated and collected. MetroPCS applauds and strongly supports the Commission's long overdue efforts to reform the antiquated USF contribution system, and agrees that the revamped USF compensation system must accomplish the Commission's stated goals of efficiency, fairness and sustainability.[3] MetroPCS also cautions the Commission to avoid approaches that may promote gamesmanship, create an unlevel competitive playing field, or use fuzzy math. The Commission's key

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, FCC 12-46, WC Docket No. 06-122, GN Docket No. 09-51 (rel. Apr. 30, 2012) ("*FNPRM*").

[3] *Id*. at ¶¶ 22-27.

objectives must be a system that is easy to administer, casts the widest possible net to reduce the burden on any individual service or customer, is technologically and competitively neutral, promotes competition and requires all carriers and service providers who benefit from universal service to contribute to the system. In response to the *FNPRM*, the following is respectfully shown:

I. INTRODUCTION AND SUMMARY

MetroPCS, as a longtime contributor to the USF, commends the Commission for taking this important step towards reforming the USF contribution system.[4] The current contribution system was designed and implemented when circuit switched voice was king and local and long distance telecommunications services were seen as separate markets. Today, packet switched networks are becoming the norm, the Internet has created an explosion in data and information services and the distinctions (both from a consumer and market standpoint) between local and long distance telecommunications services have become blurred. Further, when USF was initiated, wireless networks were in their infancy and broadband wireless data services were unknown; today, wireless penetration approaches 100% and may soon exceed 100% penetration with individuals having multiple connected devices, and broadband wireless data services are expanding exponentially. Finally, in 1996, the Internet was in its infancy and tablets were something made of paper that you wrote on. In view of these dramatic industry changes, it is no

[4] MetroPCS brings a unique perspective to the USF debate. While MetroPCS contributes to the USF, unlike many of its wireless and wireline competitors, MetroPCS does not receive a single dollar of USF support – either from the high cost fund or from the low income fund. This allows MetroPCS to approach this issue purely from the perspective of ensuring that the contribution methodology meets the Commission's goals without having to worry about the impact of these reforms on the support side of the equation.

surprise that the current USF contribution system has outlived its usefulness and must be replaced. It clearly is time that the USF be reformed and be brought into the 21st century.

The USF is an important program that benefits consumers and industry alike by creating a fund to promote a ubiquitous nationwide communications network. However, the contribution burden has skyrocketed – from its beginning with modest percentages of revenue to over 17% during some recent quarters. Recent reforms to the manner in which USF funds are disbursed hold great promise to better achieve the core objectives of the program, but the Commission properly recognized at the time that the contribution methodology likewise requires reform in order for the USF program to be fair and effective. For example, the interstate long distance market has continued to shrink while the demands placed on the system have increased. Further, for too long, certain USF contribution guidelines have been opaque, resulting in unjustifiable inconsistencies among contributors, an uneven playing field among competitors, and some gamesmanship by contributors. MetroPCS agrees with the Commission that the contribution system must be improved to achieve the fundamental principles of efficiency, fairness and sustainability and that these are the fundamental goals against which the Commission should test its reform proposals. MetroPCS strongly encourages the Commission to proceed promptly with these goals in mind.[5]

Most important, the Commission must take the requisite step of expanding the USF contribution base to include all who benefit from a ubiquitous network, including telecommunications carriers, wireless carriers, broadband and edge service providers, Internet backbone providers, Internet Service Providers, messaging services,[6] one-way VoIP services and

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[5] *FNPRM* ¶¶ 22-27.

[6] Discussed and defined *infra* at 11.

enterprise services.[7] Each of these parties benefits from the universal connectivity of all Americans, whether through the traditional public switched telephone network ("PSTN") or the broadband Internet.[8] As a result, fairness requires that each of these providers contribute to the ubiquity of those networks by contributing their fair share to the USF. Any other result simply entrenches the already-extant competitive imbalance among traditional telecommunications service providers and their broadband competitors. Further, the fund will continue to suffer as technology change occurs and the Commission and the USF contribution mechanism are unable to keep up. Indeed, consumers increasingly view alternative means of communications, such as Skype or Google messaging, as the functional equivalents of traditional telephony services. While traditional regulatory classifications may have justified disparate treatment of these emerging services in the past, they now have evolved to the point where greater parity in USF contributions is essential. Further, broadband providers benefit when telecommunications facilities are extended into new communities and increased in capacity. Service providers, such as Google and Facebook, benefit when broadband services are widely available. At present, the providers of these alternative services are unfairly exempt from paying into the USF system under the current rules, but clearly benefit from its ubiquity. The Commission simply must ensure that USF contribution obligations keep pace as communications increasingly moves away from the traditional silos of telecommunications services towards new and innovative

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[7] In addition, any category of provider or company which is eligible to receive USF support should have to equally contribute to the USF. Otherwise, the USF will merely cause some providers to have to subsidize their own competition – which creates an unlevel competitive playing field.

[8] While MetroPCS opposes the extension of USF support to broadband, to the extent that the Commission has decided to extend the support to these services, the last thing the Commission should do is give these providers a competitive advantage by not requiring them to contribute their fair share to the ubiquity of the network.

communications models that likewise benefit from universal connectivity. Otherwise, as consumers gravitate towards these new, currently non-assessable services, the very viability of the USF program may be in jeopardy.

In addition to expanding the USF contributor base, the Commission must adopt a revised contribution methodology to level the competitive playing field and reduce opportunities for gamesmanship. While the Commission has proposed a number of alternatives to the current revenue based approach, the guiding principle that the Commission must follow – either in reforming the revenue based approach or adopting a new approach – is that opportunities for gaming the system be reduced (or eliminated). Specifically, the Commission must reduce or eliminate the opportunities for providers to seize upon ambiguities in the contribution standards to artificially minimize USF obligations. The Commission should seek to minimize exemptions or exclusions which may create further opportunities for avoidance and gamesmanship. This not only will increase competitive fairness, but also will reduce the administrative burdens on the Commission and on contributors. The approach must be one that has, at bottom, the ability to translate across all contributors and be fair.

There are a number of approaches which the Commission could adopt to reform the USF contribution system. While the Commission has provided a wealth of information on the various approaches, a significant amount of additional information is necessary to properly evaluate which approach will best meet the Commission's objectives. MetroPCS is hopeful that the record in this proceeding will provide the Commission and commenters with the necessary information to properly evaluate which approach will achieve the Commission's goals. Obviously, a revenue based USF contribution system is one approach, but such an approach is susceptible to gaming if not all revenue from all providers, however derived, is used.[9] Numbers or connection based approaches suffer from other kinds of gaming opportunities – such as manipulating how many numbers are active or causing devices which today require telephone numbers (such as aircards and tablets) to be retooled to eliminate their need for telephone numbers. Each approach also has certain drawbacks. For example, a revenue-based approach may overlook services that are provided for "free" to end users because the model relies on third party advertising revenue support. Likewise, a numbers or connection-based approach may not fairly account for the wide disparity in the amount of revenue derived from each number or connection.[10]

Whatever approach is used, providers must no longer be required to expend significant resources determining how much to pay, and the Commission should be required to divert less time and attention to analyzing the method used to calculate the contribution. The method must be susceptible to external public reporting which allows the Commission to have the additional comfort that, if the numbers are misstated, more consequences than having to pay additional USF funds would result.[11] Furthermore, MetroPCS encourages the Commission to routinely provide *timely* guidance to providers as new and innovative services come to market. MetroPCS recommends that the Commission issue the sort of guidance that the Internal Revenue Service

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[9] It also lends to interesting issues of what revenue would be used for providers who use alternative business models, such as advertising revenues, to pay for the service.

[10] For example, MetroPCS routinely has average revenue per unit (ARPU) $10-$20 less than the largest nationwide wireless providers. It would be unfair to have MetroPCS to have to contribute at the same rate as providers who derive considerably higher revenue per number.

[11] For example, if active telephone numbers were used, each carrier already reports numbers of subscribers as part of its financial reports and other reports – such as NANPA number utilization reports. Further, if revenue were used, each company that is public would suffer significant consequences from private litigants and the SEC if the revenue amount were misstated.

("IRS") provides with respect to federal taxes. Prompt informal guidance is far less cumbersome than traditional Commission rulemaking proceedings, and will result in a greater understanding by providers of what types of revenues should be included for USF contribution purposes.

In sum, the Commission has before it a historic opportunity to improve an important contribution system that is long overdue for reform. MetroPCS urges the Commission promptly to adopt the recommendations set forth in these comments in order to ensure the future viability of the USF, while at the same time promoting competitive and technological neutrality among services and providers.

II. AS A PROVIDER OF TAX- AND REGULATORY-FEE-INCLUSIVE SERVICE PLANS, METROPCS IS ESPECIALLY ADVERSELY IMPACTED BY USF CONTRIBUTION INEFFICIENCIES

MetroPCS has a lengthy history of being a disruptive, innovative, pro-competitive force in the wireless industry. MetroPCS pioneered the consumer-friendly "all-you-can-eat" voice, text and data plans that now have been replicated in some form or other by all of the national carriers. MetroPCS continued its tradition of pricing innovation in 2010 by offering service plans at a flat rate that includes *all applicable taxes and regulatory fees, such as MetroPCS' contribution to the USF*. MetroPCS sensed that consumers wanted to be spared the quarterly price variations that came from the Commission changing the contribution percentage. Not surprisingly, the MetroPCS "all in" pricing plans have proven to be immensely popular. Further, as over 80% of MetroPCS' customers use MetroPCS' wireless service as their primary or only communications service and a significant number do not have a wired Internet connection, MetroPCS serves as these customers' only connection and primary on-ramp to the Internet, allowing many to participate in the wireless and Internet revolution who otherwise might be left behind. Unlike other carriers that pass USF contribution costs through to their customers, MetroPCS directly bears the burden of these obligations for nearly all of its customers. Thus, whenever a competing provider games the system to evade or reduce its USF contribution, MetroPCS is harmed in a direct, tangible manner.

MetroPCS is particularly harmed by increases in USF contribution, as it provides its service on a month-to-month basis. The impact of increased USF charges is blunted for the largest nationwide carriers whose customers typically are locked into multi-year contracts. End-users are unlikely (or unable, without incurring high early termination fees) to switch from these carriers simply because of an increased USF pass-through charge. In contrast, the tax- and regulatory-fee inclusive offerings of MetroPCS, and the fact that MetroPCS customers do not sign long-term contracts, means that MetroPCS is unable to pass through increased USF charges, making it particularly sensitive to the unequal treatment of similar services that is endemic to the current USF contribution regime. By placing disruptive, competitive providers like MetroPCS at a significant disadvantage vis-à-vis their competitors, the current system threatens to undermine innovation and competition in the communications industry. In order for MetroPCS and others to have the continued incentive to provide innovative pricing models and service offerings, USF contribution obligations must be assessed on a standardized and competitively neutral basis.

III. TO ACHIEVE FAIRNESS, THE COMMISSION MUST EXPAND THE USF CONTRIBUTION BASE

To achieve the Commission's objective of increasing the fairness of the USF contribution system, the contribution base must include *all* service providers who benefit from universal connectivity, irrespective of whether the service is voice or data and regardless of the technology employed, whether located at the edge, in the middle, or the on-ramp to the Internet. As the Commission itself has recognized, the communications world is increasingly converging, with traditional switched traffic "evolving toward broadband, all-IP networks."[12] Further, the traditional notions of local and toll, intrastate and interstate, are blurring as new services are introduced that defy traditional classifications. For example, broadband services recast the whole scheme. When a user is surfing the web she may be communicating at one instant with a web site hosted locally, another minute at a web site hosted across the nation, and at another moment at a web site hosted around the world. Further, the broadband Internet, and the rapid advance of technology have opened up a whole new class of service providers who have no facilities and rely strictly on the Internet for the delivery of their services. In many cases, these services are functionally equivalent to – and competitive substitutes for – the telecommunications services that traditionally have comprised the USF contributor base. Through this convergence, voice services and data services are becoming increasingly indistinguishable in terms of function and end-user experience. Any USF contribution methodology that hopes to maintain competitive fairness and continued relevance as technology advances must include not only traditional USF contributors, but also those companies – such as Google, Facebook, Twitter and other edge providers – that offer services functionally equivalent to telecommunications services, regardless of technology or application. The good news from the Commission's perspective is that these services would most likely be classified as information services and would be considered interstate (as opposed to intrastate) in nature. While these edge providers are the current service providers which compete, but are not included

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[12] *See, e.g., Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, ¶ 609 (rel. Feb. 9, 2011).

in the USF contribution base, the Commission must design any USF contribution system to continue to expand and include additional providers of functionally equivalent services as they emerge. Since all such service providers benefit from ubiquitous connectivity, it is fair to have them contribute to ensure that the contribution base is future-proof. If the Commission does not build in such a mechanism, the Commission would be picking winners (the new entrants) over established players (losers) who are contributing to USF. Given the speed at which technological change now occurs, the Commission can ill-afford to ignore these new services, lest the services from which it seeks contribution are eclipsed by the new services which are not contributing.[13]

Broadening the USF contribution base in this manner will have several important and pro-competitive results. *First*, it will enable the Commission to grow (and continue to grow) the USF contribution base in a manner that can support the Commission's traditional goal of universal voice service, as well as the Commission's expanded goal of universal broadband connectivity for all Americans. *Second*, a broadened USF contribution base will result in a significantly reduced contribution factor, spread out over a substantially increased number and scope of contributors, all of whom benefit from the improved reach of voice and data communications. *Third*, this will reduce the relative impact of the USF contribution methodology on competitive services – some of which contribute today while others do not. Accordingly, this wider contribution base will create a stable, future-proof USF funding mechanism that is more competitively neutral, more inherently fair, and more sustainable than

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[13] This is similar to the problem the Commission faced as traditional interexchange services and access lines declined over the last 10 years causing the Commission to have to repeatedly increase the USF contribution percentage.

the existing system, in which a narrower group of service providers bear the USF system's entire weight for the benefit of all.

Largely limiting USF contributions to traditional telecommunications service providers leads to a significant inequity and fails to acknowledge the competitive realities of today's (and tomorrow's) communications marketplace.[14] To this end, the Commission must ensure that any USF contribution reform it undertakes includes the following services, in their entirety, as USF contributors: (1) Broadband service and edge service providers; (2) Internet backbone providers, (3) Internet Service Providers, (4) SMS and other messaging services, such as MMS ("Messaging Services");[15] (5) One-way VoIP services; and (6) Enterprise services.

A. The Commission has the authority to expand the USF contribution base to include other communications services

Traditionally, the Commission only required providers of interstate telecommunications services to contribute to the USF. But, the Commission possesses the authority to require USF contributions from a much broader cross-section of the communications industry.[16] The starting point is Section 254(d) of the Communications Act of 1934, as amended, (the "Act"), which requires that "every telecommunications carrier that provides interstate telecommunications service" contribute to the USF.[17] In addition, the Commission has permissive authority to

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[14] Even if non-facilities-based providers were required to compensate facilities-based providers for the use of their network, facilities-based providers are still placed at a substantial competitive disadvantage due to the high costs of time-consuming compliance with USF filing obligations.

[15] MetroPCS does not include short code messages in its definition of Messaging Services.

[16] Indeed, the Commission previously has exercised this permissive authority by applying USF contributions to two-way interconnected VoIP services. *See Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶ 40 (2006) ("*2006 Contribution Methodology Order*"); *see also Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1240-41 (D.C. Cir. 2007).

[17] 47 U.S.C. § 254(d).

require contributions from other communications service providers. For example, Section 254(d) also empowers the Commission to require USF contribution from "any . . . providers of interstate telecommunications . . . if the public interest so requires."[18] This important additional permissive authority enables the Commission to require USF contribution from a broader base of entities, including broadband service and edge service providers, Internet backbone providers, Internet Service Providers, Messaging Services, one-way VoIP services, and enterprise services.[19]

The Commission has properly taken a broad view of the term "provide" as it pertains to Section 254(d), and has determined that it has a meaning separate and distinct from the term "offer."[20] While "offer" requires that providers hold out such a service to end-user customers (that is, the offered product is an integrated offering that the end-user views as a single product when purchased), "provide" merely requires that such a service be included as part of the integrated offering to end-users.[21] Importantly, this distinction expands the scope of the

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[18] 47 U.S.C. § 254(d). This distinction finds support in the definitions in the Act. The term "telecommunications" is broadly defined to include the transmission of information between points, whereas the term "telecommunications service" is more narrowly defined to include offering telecommunications "for a fee directly to the public." The fact that the last sentence of 254(d) uses the broader term provide of "interstate telecommunications", not the narrower term "telecommunications service" provider or "telecommunications carrier," supports an expansive view of the Commission's permissive authority to increase the contribution base.

[19] Since the Commission already has classified these services as interstate services, there can be no doubt that, if the Commission concludes that such services include "telecommunications," the Commission has the authority to impose USF contribution requirements.

[20] *FNPRM* ¶ 33.

[21] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 34-41 (2002); *Nat'l Cable & Telecom. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 990 (2005).

Commission's Section 254(d) permissive authority to include both those service providers that offer telecommunications alone, as well as those who do not separately offer telecommunications, but merely provide telecommunications as part of their integrated service offering or which use telecommunications to provide their information services. Indeed, the Commission previously has adopted such a position with respect to two-way interconnected VoIP in a ruling that was upheld by the D.C. Circuit.[22] Thus, although many of these proposed USF contributors provide information services, each of these information services incorporates a telecommunications component into the information service provided either by the provider or by the customer but used by the provider, and therefore falls under the Commission's Section 254(d) permissive authority.[23]

B. Broadband service and edge service providers, Internet backbone providers, and Internet Service Providers must be required to contribute to the USF

We no longer live in a nation connected by the landline telephone. If anything, traditional wired voice communications have taken a backseat to text and data communications – often by wireless – which are poised to continue to grow – but also via wireline and cable services. From the perspective of the consumer, communication can occur either by voice and data and as such voice and data services have become functionally equivalent, with email, Facebook, twitter, instant messaging, location services and Internet chat having displaced

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[22] *2006 Contribution Methodology Order* ¶ 40; *see also Vonage Holdings Corp.*, 489 F.3d at 1240-41.

[23] These services are distinguishable from other services that have been found not to be "telecommunications" in that they include a telecommunications component as part of the integrated information service offering. *Cf. Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service,* Memorandum Opinion and Order, 19 FCC Rcd 3307, ¶ 9 (2004) (finding that an IP address directory service was not telecommunications).

traditional telephone calls in many segments of the population, particularly among young Americans.[24] While there are lingering distinctions between a telecommunications service and an information service in the communications law context, these distinctions have no importance to a public focused on communicating and not how that communication may occur (or the regulatory treatment each different form may take). Further, there is no doubt that both information service providers and telecommunications service providers benefit tremendously from the ubiquitous national communications network.

For example, 20 years ago two friends would use a wireline telephone to make plans for dinner; now those same two friends make their plans via text message, email, Internet chat services, Facebook messages or by using their Twitter accounts. Each of these communications methods includes a telecommunications component, just as the Commission has determined for two-way interconnected VoIP. But, these functionally equivalent communications providers may offer service to customers with vastly different investments in traditional service provider infrastructure and currently have vastly different USF contribution obligations. The telephone company is a facilities-based service provider with an extensive network and is required to contribute to USF on all interstate telecommunications revenue. The so-called "edge" services generally are riding on the networks of others and rely on telecommunications provided by others and at most may pay USF on the charges for the telecommunications facilities used to connect them to the Internet (but not for the use of the Internet to deliver their traffic).[25] This

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[24] Greg Bensinger, "Talking Less, Paying More for Voice," The Wall Street Journal (Jun. 5, 2012) (discussing the communications "shift driven by younger users who have adopted texting as their primary way of communicating while restricting calls to a small privileged circle of friends, parents and circumstances"), *available at* http://online.wsj.com/article/SB10001424052702304065704577426760861602618.html.

[25] This assumes that such providers are not submitting exemption certificates for these facilities.

inequity is exacerbated if the edge service provider can effectively circumvent a USF contribution base that is focused on traditional end-user revenue. For example, a provider of Internet voice, video and text chat, such as Google, may rely heavily on advertising-supported revenue streams, and may charge their end-user customers little or nothing for using the communications service. Yet, Google's ability to provide these communications services depends just as much on the universal connectivity of all Americans as does MetroPCS' traditional voice service. This also applies to Internet broadband and Internet Service Providers who would have no business if customers could not reach their intended destinations. Fairness requires that the Commission ensure that *all* communications service providers – including broadband service providers, Internet backbone providers, Internet Service Providers, and edge service providers – who derive a benefit from universal voice and data communications infrastructure pay their equal share to ensure the viability of the USF program.

C. To the extent that the USF contribution base expands to include competing services, Messaging Services should be included

As a provider of Messaging Services, MetroPCS understands firsthand the confusion with respect to classifying these services for USF contribution purposes. Indeed, even the Universal Service Administrative Company ("USAC") is not sure what classification is proper for Messaging Services revenues and has sought guidance from the Commission as to whether Messaging Services revenue is properly included in the USF contribution base.[26] If it is unclear even to USAC whether Messaging Services qualify for inclusion, how can carriers possibly have

[26] *See* Letter from Richard A. Belden, Chief Operating Officer, Universal Service Administration Company, to Sharon Gillett, Chief, Wireline Competition Bureau, WC Docket No. 06-122 (Apr. 26, 2011) (seeking guidance on whether text messaging revenues should be reported as telecommunications revenue or non-telecommunications revenue).

a uniform interpretation of whether Messaging Services are subject to USF assessment?[27] The result is competitive imbalance as some carriers resolve the ambiguity in their favor while others do not. If the USF contribution base is expanded to include each of the other categories that MetroPCS advocates (broadband and edge providers, Internet backbone providers, Internet Service Providers, one-way VoIP and enterprise services) including Messaging Services would eliminate confusion and promote fairness.

In contrast, should the Commission determine that competing services – such as broadband Internet access, Internet backbone providers, Internet Service Providers, email, Internet chat, among others – need not pay into the USF, including Messaging Services would result in substantial inequity. If the determination of who pays is determined by whether the provider is a traditional telecommunications carrier or not, this will cause the services of traditional telecommunications carriers to be less competitive and ultimately the contributions made to the USF will diminish over time. Further, such a distinction will incent carriers to recast their services to avoid USF contributions – which will not serve the public interest and will further diminish the contribution such services will make to USF.

Such a result would be inconsistent with the Commission's longstanding goal to regulate similar services in a similar manner in order to promote competition among like services. Further, the express Commission goal of reforming the USF contribution regime to promote fairness and efficiency is served only if all competing services are treated similarly. A system which would allow a provider to escape USF liability would not promote fairness or efficiency.

[27] In any event, any determination that Messaging Services should be required to contribute to the USF (either under the current scheme or under a reformed system) should be prospective in nature given the significant amount of legitimate uncertainty surrounding the existing status of Messaging Services.

Another goal is to design a contribution system which is sustainable – which by causing similar services to be required to contribute similarly would serve. Indeed, the Commission has specifically expressed its desire to create an "enduring regulatory regime under which *substantially similar services* are subject to symmetrical regulation and the marketplace shapes the development of mobile services to meet customer demands."[28] The Commission must heed this inclination here. When competing services are brought into the USF contribution base, MetroPCS will applaud the broadened contribution base that would arise from the inclusion of Messaging Services. However, to subject Messaging Services, but not their competitors, to USF contribution requirements would create a substantial imbalance that will harm competition.

D. One-way VoIP services should be required to contribute to the USF

As the Commission recognized as far back as 2006, "new VoIP services increasingly substitute for traditional phone service."[29] In the six years since that order, the extent of substitution has increased throughout the industry. Indeed, many wireless service providers, including MetroPCS, have indicated that they are planning to transition their traditional CDMA and GSM voice services to voice over LTE ("VoLTE"), which is a form of VoIP.[30] This means that, in the near future, almost *all* wireless voice services will be VoIP services. Further, much of the voice service provided by non-traditional telecommunications carriers, such as cable companies, is provided using VoIP instead of traditional packet switched voice services and even

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[28] *Implementation of Section 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, ¶ 69 (1994) (emphasis supplied).

[29] *2006 Contribution Methodology Order* ¶ 36.

[30] *See, e.g.*, Andrew Webster, "MetroPCS launching VoLTE handsets in second half of 2012," The Verge (Feb. 23, 2012), *available at* http://www.theverge.com/2012/2/23/2819735/metropcs-volte-handsets; Shane McGlaun, "Verizon, AT&T to Launch Voice over LTE Service in 2013," DailyTech (Jan. 20, 2012), *available at* http://www.dailytech.com/article.aspx?newsid=23835.

traditional carriers, such as Verizon and AT&T, are transitioning to VoIP for their integrated broadband service customers. Although two-way VoIP services are interconnected services and may be subject to USF contribution under the current rules, the Commission must ensure that the competitive playing field remains level between these traditional two-way VoIP providers and those providers of one-way VoIP. Providers of one-way VoIP, like Skype, are collecting substantial revenues as replacements for traditional telephone service.[31] Further, certain services which do not use the PSTN, such as Facetime (by Apple), and Tango, also are substituting for traditional VoIP by not requiring interconnection through the PSTN. The key for all these services must be whether they provide a communications path – be it one-way or two-way – which substitutes for, or is the functional equivalent of, traditional telecommunications services that are subject to USF.

Given the rise of one-way VoIP services as competitors to traditional voice services, the Commission proposes to require USF contributions for services meeting the following definition:

> One-way VoIP service. A service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network or terminate calls to the public switched telephone network.[32]

MetroPCS supports including one-way VoIP because "the one-way VoIP exemption is 'an enormous loophole' that creates competitive disparities"[33] and "unfairly penalizes traditional

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[31] As the Commission recognizes, Skype has reported that it had over 8.8 million paying users worldwide for its SkypeIn and SkypeOut services and domestic revenues of over $140 million in 2010. Skype S-1 at 132.

[32] *FNPRM* ¶ 58.

[33] *Id*. at ¶ 61 (citing XO Sept. 17, 2010 Ex Parte Letter at 8).

voice providers (and ultimately their customers) and artificially skews the market."[34] However, MetroPCS is concerned that the portion of the definition requiring the communications to be "two-way" would be unduly limiting because it should not matter whether the recipient can respond or not. The definition of telecommunications does not include such a two-way limitation and this definition should not as well.[35] Accordingly, MetroPCS supports revising the first prong to read "enables real-time voice communications."

Further, MetroPCS believes that the fourth prong of the definition should be revised to read "permits users generally to receive calls that originate on the public switched telephone network or the Internet or terminate calls to the public switched telephone network or the Internet." Without such a broadening principle, the increasing migration to Internet for connectivity will allow these services to continue to escape USF even though they will be the functional equivalent of, and compete with, traditional telecommunications services. For example, whether the customer uses a telephone number or an IP address should not determine whether the service should be required to contribute to USF. This would put form over substance and would allow truly competing services to be treated differently. In order to both broaden the USF contribution base, and promote the important principle of competitive neutrality, the Commission must eliminate the one-way VoIP exemption and require that all VoIP services, whether interconnected with the PSTN or not and whether one-way or two-way, contribute to the offering of the ubiquitous communications network that they enjoy.

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[34] USTelecom Mar. 28, 2012 Ex Parte Letter at 3.

[35] For example, one-way paging services have long been subject to USF and clearly do not include two-way communications.

E. Enterprise services must be included in the USF contribution system

Enterprise services also are a morass of USF contribution inconsistency. As enterprise service providers have begun to offer more IP-based services, there is significant uncertainty as to which of these services qualify for inclusion in the USF contribution base. As a result, in many instances one provider will be contributing for a certain enterprise service while another provider may not be.[36] This produces unfair results, not only among service providers, but also as to the entire USF program which may not receive all of the funds it should. At bottom, each of these enterprise services – whether provided via IP-based infrastructure or traditional switched circuits – benefits from the ubiquity of the national communications network. And, importantly, each of these services contains a telecommunications component.[37] In order to equitably broaden the USF contribution base, the Commission should determine that enterprise services such as Dedicated IP, Virtual Private Networks ("VPN"), Wide Area Networks ("WAN"), among other traditional enterprise services, each include a telecommunications component and, therefore, are required to contribute to the USF. This will level the playing field between competing enterprise service providers, and between enterprise service providers and other providers of traditional telecommunications services that compete in this space.

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[36] If you add to the stew the fact that enterprise customers may have mixed services and may have submitted exemption certificates for the entirety of a facility when just a portion of the facility should be exempt, these customers may be exempting a significant amount of revenue which rightfully should be included.

[37] *See, e.g.*, *2006 Contribution Methodology Order* ¶ 40; *see also Vonage Holdings Corp.* 489 F.3d at 1240-41.

IV. EFFICIENCY AND EASE OF ADMINISTRATION MUST BE HALLMARKS OF A REFORMED USF CONTRIBUTION SYSTEM

The Commission correctly recognizes the important fact that "Section 254(d) is grounded on the principle that the contributions system should be fair for contributors."[38] However, the manner in which such a revenue-based system will be administered is just as important as the system itself. MetroPCS submits that fairness and sustainability will be best achieved if the Commission manages the USF system based upon the model applied by the government to the U.S. federal tax system. In order to aid taxpayers in navigating the complex system, the IRS releases a series of different types of documents and publications that provide guidance.[39] These include formal regulations, promulgated under notice-and-comment procedures, official revenue rulings, and private letter rulings made in response to a specific taxpayer request. The key is that taxpayers have the ability to secure timely guidance when questions arise. A similar approach would have the Commission regularly issue prompt guidance to carriers with respect to USF contribution compliance outside of a full notice-and-comment proceeding. Such guidance would not necessarily be formal or dispositive on all carriers, but, much like the IRS guidance procedures, would instead provide carriers with some basic "rules of the road" for USF contributions that can inform their revenue allocations.

At present, the Commission generally provides guidance to contributors only through the basic instructions on the USF contribution forms or through full blown notice-and-comment proceedings. This simply is not sufficient for an industry as complex and constantly-evolving as the communications industry. These bare-bones instructions lead to inconsistent interpretations,

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[38] *FNPRM* ¶ 24.

[39] *See, e.g.*, "Understanding IRS Guidance – A Brief Primer," Internal Revenue Service, *available at* http://www.irs.gov/irs/article/0,,id=101102,00.html.

meaning that compliance methods among carriers will continue to vary widely, to the detriment of the USF and competition. The absence of an effective private letter ruling process is amply demonstrated by the lengthy period that the USAC request for clarification on the proper classification of Messaging Services has gone unanswered. As part of its overall reform, the Commission must establish a means to regularly provide prompt and clear guidance as to what revenues are subject to USF assessment. Internal time limits should be put in place to assure timely action. MetroPCS also recommends that the Commission create a centrally-accessible database of guidance provided to carriers, with sensitive information redacted, so that others may obtain the benefit of informal guidance issued to other carriers.[40] This would save the Commission substantial time and ensure that it does not have to repeat the same guidance for multiple providers, as well as foster a fair structure where companies are aware of any comply with the same set of rules and guidelines.

The Commission also should consider revising the policy disparity that allows for upward revisions to contribution obligations for a period of three years, while downward revisions must be made within one year. Giving carriers a much shorter window than the Commission to revise reportable revenues encourages carriers to take aggressive positions, lest they lose the opportunity to recapture incorrectly-designated revenue. If the Commission is committed, as it should be, to fairness, permitting carriers to have a full three years to revise revenues will result in carriers being more likely to err on the side of inclusion with respect to new or innovative revenue streams, pending Commission guidance. This will promote an even playing field among competitors and will also improve the sustainability of the USF.

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[40] This would be similar to how the IRS treats private letter rulings, which are ordinarily released after sensitive identifying information has been removed. These letters provide guidance to other taxpayers, but may not be relied on as precedent.

V. CONCLUSION

The foregoing premises having been duly considered, MetroPCS strongly recommends that, consistent with MetroPCS' recommendations herein, the Commission (1) expand the USF contribution base to include *all* providers that benefit from the ubiquitous national communications network; (2) revise the manner in which contributions are assessed in order to promote competitive fairness and efficiency in the USF collection process; and (3) commit to provide timely guidance with respect to revenue classification to promote consistency within the contribution system.

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